

# ATRA Legislative Watch

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## State Activity

### State Legislatures Winding Down for the Year

Only 11 states, as well as the District of Columbia and Puerto Rico, are currently meeting in regular session: CA, DE, LA, MA, MI, NC, NH, NJ, NY, PA, RI. Four of those states (DE, LA, NH, and RI) are projected to adjourn by the end of the month.

### California – Results from Tuesday’s Primary Election

Primary elections were held on Tuesday, June 8, 2010. Below is a brief recap of key results. For additional information, please contact John Sullivan, President of the Civil Justice Association of California, at [Sullivan@cjac.org](mailto:Sullivan@cjac.org).

Proposition 14 – The “open primary,” proposal, which CJAC supported, passed as expected. According to CJAC, the proposal introduces a system under which the top primary election vote-getters – regardless of party – will face one another in the general election. In addition to the belief that a more centrist, cooperative legislature will result, there is a possibility that plaintiffs’ lawyer election clout will be weakened.

Governor – Unopposed Democrat Jerry Brown will face former CEO and President of eBAY Meg Whitman. According to CJAC, Whitman understands excessive litigation and supports limitations on damages in most liability lawsuits – such as the one included in California’s medical liability reform law which Jerry Brown helped to enact when he was governor in the late 1970s.

Attorney General – On the Republican side, respected Los Angeles District Attorney Steve Cooley defeated two opponents who had built earlier, more conservative, but more vote-splitting platforms. In the Democratic race, San Francisco District Attorney Kamala Harris defeated former Facebook General Counsel Chris Kelly. With respect to civil justice issues, Cooley told CJAC that he does not support public prosecutors hiring contingency fee lawyers to work on civil complaints and would not do so as attorney general. Harris did not respond to the question, and no follow-up from her staff ever occurred.

### Louisiana – Take Action Now!

On Monday, June 14, 2010, the Louisiana House Civil Law and Procedure Committee is scheduled to hear H.B. 731, legislation that would enable the Attorney General to hire private attorneys on a contingency fee basis. Proponents of the

legislation, backed by personal injury lawyers, are saying the bill is a “fix” to the BP oil spill, but, in reality, they are using the spill as a pretext to pass legislation that has failed over the past several years. **ATRA strongly encourages members with an interest in Louisiana to engage their local lobbyist and/or counsel to urge members of the committee to oppose this legislation. Please coordinate lobbying efforts with Ginger Sawyer of the Louisiana Association of Business and Industry ([gingers@labi.org](mailto:gingers@labi.org)) and Jim Harris of the Coalition for Common Sense ([jharris@hdaissues.com](mailto:jharris@hdaissues.com)).**

This morning, we reported via Legislative Alert that the Louisiana Senate could vote on legislation to authorize the recovery of punitive damages, S.B. 547 (Robert Marionneaux, Jr. – D) as early as today. Such a vote had not occurred at the time we went to press. ATRA will continue to closely monitor the situation and report to readers on any new and/or breaking developments. In the meantime, **ATRA continues to encourage members to engage their local lobbyists and/or counsel to defeat this legislation. Please coordinate lobbying efforts with Ginger Sawyer of the Louisiana Association of Business and Industry ([gingers@labi.org](mailto:gingers@labi.org)) and Jim Harris of the Coalition for Common Sense ([jharris@hdaissues.com](mailto:jharris@hdaissues.com)).** S.B. 547 is legislation that would authorize the recovery of punitive damages in civil cases; current Louisiana law generally does not permit the recovery of punitive damages in most cases. The bill was amended in committee by Senator Marionneaux to limit damages to certain activities as follows: “if it is proved that the plaintiff’s injuries were caused by the defendant’s wanton or reckless disregard for public safety in the drilling, equipping, operating, or producing of an oil or gas well, or in the commercial storage, handling, or transportation of oil, gas, product of oil or gas, or hazardous or toxic substance.” Predictably, the sponsor is using the BP oil spill as the reason for pushing the legislation.

### **New York – Good News!**

On June 8, 2010, the New York Assembly Labor Committee decided to hold S.1823-B (Thomas Morahan – R) / A. 5414 (Steve Englebright – D), legislation that would establish a new right to sue for an “abusive work environment.” Civil justice reform advocates advise that they will continue to closely monitor the legislation in the event proponents try to revive the legislation. In the event that occurs, we will notify readers of *Legislative Watch* and strongly encourage engagement on the ground in Albany.

By way of background, the New York legislation is part of a broader campaign to pass workplace bullying liability legislation. Over the past five years, 17 states have considered legislation based on the Work Place Bullying Institute’s “Healthy Workplace Bill,” but until now, none of these bills had gained traction. On May 12th of this year, the New York State Senate passed such legislation on a bipartisan basis.

The New York legislation, and all other such legislation, has significant shortcomings. As the NFIB/NY pointed out, the legislation would hold employers strictly liable for any “abusive conduct” in the workplace, whether or not the employer was aware of it. The legislation provides remedies including: reimbursement of lost wages; medical expenses; compensation for emotional distress; punitive damages; and attorney’s fees. The unreasonable strict liability standard, along with the damages that would be available, will make this bill attractive to the trial bar as they seek to expand their market share and create new lines of business. In fact, the *Wall Street Journal*

quoted Albany plaintiff's lawyer Matthew Tully as saying, "It's going to drum up a lot of business for us. This is almost guaranteed to flood the courts." Most major New York business organizations are opposed to this legislation, and New York City Mayor Michael Bloomberg, according to the Wall Street Journal, opposes the legislation, saying it would lead to costly litigation.

For additional information, please contact Mike Elmendorf of the NFIB/NY at [mike.elmendorf@nfib.org](mailto:mike.elmendorf@nfib.org).